

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>THAO N. VO</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>RUSSELL STOVER CANDIES</b>	)	
Respondent	)	Docket No. 1,005,751
	)	
AND	)	
	)	
<b>SENTRY INSURANCE</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier request review of a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on October 16, 2002.

**ISSUES**

The Administrative Law Judge (ALJ) found the claimant's accidental injury arose out of and in the course of employment and designated an authorized treating physician as well as payment of \$500 unauthorized medical expense to Dynamic Health.

The sole issue raised on review by the respondent and its insurance carrier is whether the ALJ erred in determining the claimant's accidental injury arose out of and in the course of employment. Respondent argues claimant's fall at work was caused by a personal condition unrelated to her employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

On July 18, 2002, the claimant was working on her line inspecting candy when she became dizzy. She requested permission to go to the nurse's room but the line leader refused to let her leave the line. Claimant's uncontradicted testimony was that the speed of the line made her dizzy.

The claimant made several requests for permission to go to the nurse's room but her requests were denied and she was admonished to remain at her work station on the line.

Ultimately, the claimant took a few steps away from the line and fell to the floor. Although claimant could not recall hitting her head, nonetheless, after the incident the claimant had complaints her head felt heavy and she had headaches.

Two co-workers, Linda Mask and Juan Aquino, provided affidavits stating that they observed the claimant fall and hit her head on July 18, 2002. In addition, Mr. Aquino corroborated claimant's testimony that claimant's line was going at an unusually high pace.

To receive workers compensation benefits, the claimant must show a "personal injury by accident arising out of and in the course of employment."<sup>1</sup> The question of whether there has been an accidental injury arising out of and in the course of employment is a question of fact.<sup>2</sup>

In *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995), the Supreme Court stated the general principles for determining whether a worker's injury arose out of and in the course of employment:

The two phrases arising "out of" and "in the course of" employment, as used in our Workers Compensation Act, K.S.A. 44-501 *et. seq.*, have separate and distinct meanings; they are conjunctive, and each condition must exist before compensation is allowable. The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.

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<sup>1</sup> K.S.A. 44-501(a); *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197, 689 P.2d 837 (1984).

<sup>2</sup> *Harris v. Bethany Medical Center*, 21 Kan. App. 2d 804, 805, 909 P.2d 657 (1995).

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to each case.<sup>3</sup> The phrase "arising out of" employment requires some causal connection between the injury and the employment.<sup>4</sup>

It is not always necessary for an injury to be caused by trauma or some form of physical force before it can be found compensable.<sup>5</sup> However, when an injury is attributable to a personal condition of the employee and no other factors contribute to the injury, the injury is not compensable.<sup>6</sup>

Respondent argues claimant's fall was the result of a personal condition and no other factors contributed to increase the risk of injury from such fall. The Board disagrees. Claimant's uncontradicted testimony established that the speed of her line on July 18, 2002, made her dizzy. The unusual speed of her line was corroborated by Mr. Aquino, her co-worker. Claimant has established a causal connection or nexus between her employment and the fact that she became dizzy and fell.

In this case, claimant was in the course of employment at the time of the accident. Furthermore, the injury was not from a risk that was solely personal to the claimant. Accordingly, the July 18, 2002 accident arose out of and was directly caused by claimant's employment. The Administrative Law Judge's Order should, therefore, be affirmed.

As provided by the Act, preliminary hearing findings are not binding but are subject to modification upon a full hearing on the claim.<sup>7</sup>

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated October 16, 2002, is affirmed.

**IT IS SO ORDERED.**

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<sup>3</sup> *Newman v. Bennett*, 212 Kan. 562, 568, 512 P.2d 497 (1973).

<sup>4</sup> *Pinkston v. Rice Motor Co.*, 180 Kan. 295, 302, 303 P.2d 197 (1956).

<sup>5</sup> See *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

<sup>6</sup> *Bennett v. Wichita Fence Co.*, 16 Kan. App.2d 458, 824 P.2d 1001, rev. denied 250 Kan. 804 (1992); *Martin v. U.S.D. No. 233*, 5 Kan. App.2d 298, 615 P.2d 168 (1980).

<sup>7</sup> K.S.A. 44-534a(a)(2).

Dated this \_\_\_\_\_ day of December 2002.

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BOARD MEMBER

c: Bruce A. Brumley, Attorney for Claimant  
Brenden W. Webb, Attorney for Respondent  
Bryce D. Benedict, Administrative Law Judge  
Director, Division of Workers Compensation